

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





ORIGINAL **75-4122**

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**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

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MARCO NIKPRELEVIC,

*Petitioner,*

v.

IMMIGRATION AND NATURALIZATION SERVICE,

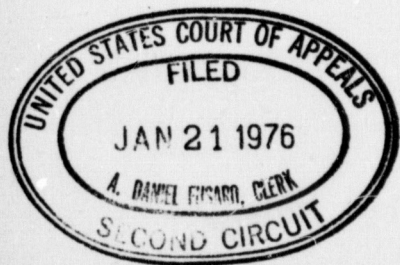
*Respondent.*

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**JOINT APPENDIX**

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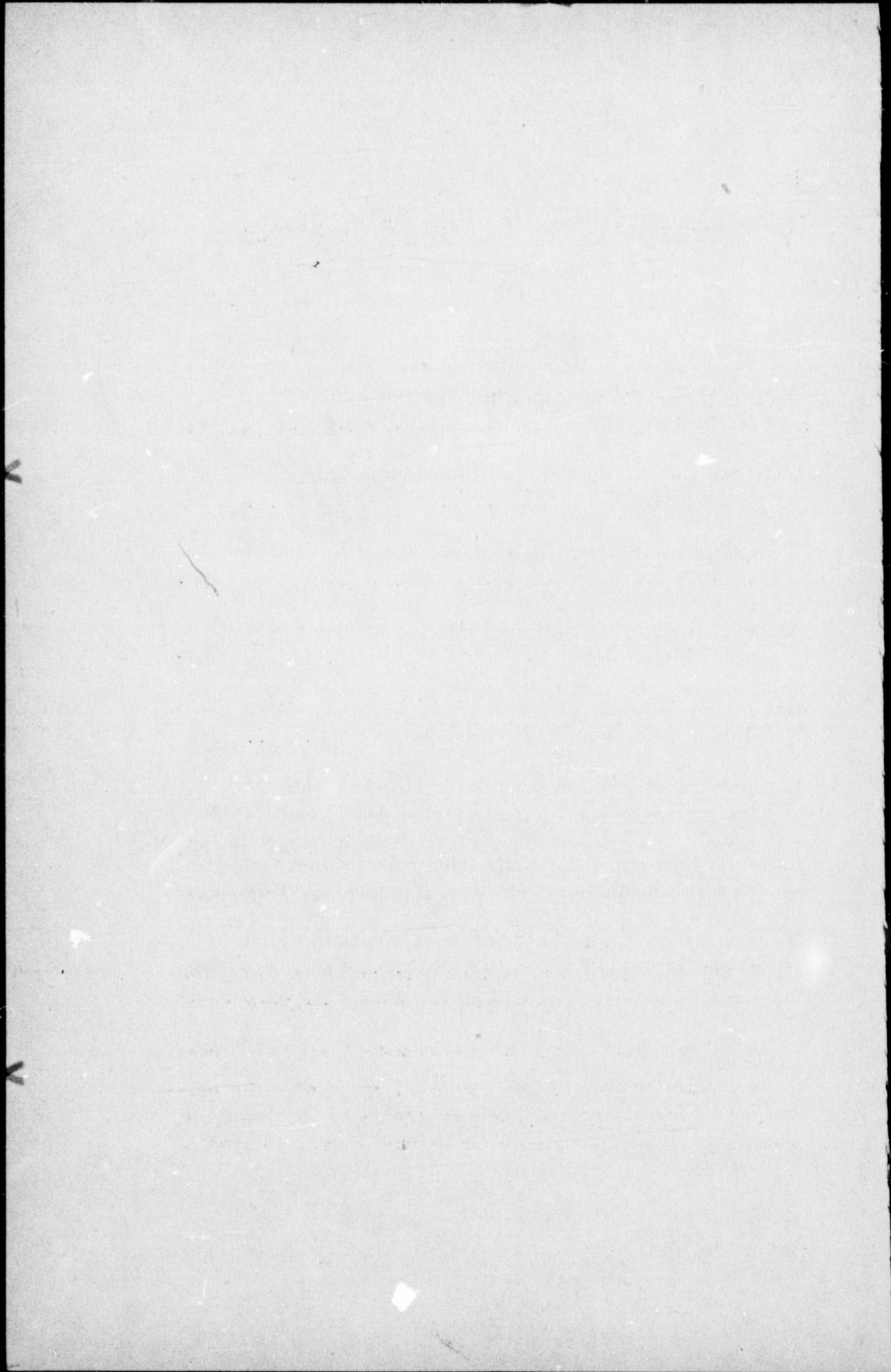
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**Petition for Review by the Circuit Court of Appeals.**

**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

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MARCO NIKPRELEVIC,

A 19 471 722

Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

---

PETITION FOR REVIEW OF DEPORTATION ORDER

MARCO NIKPRELEVIC, by his attorney, petitions the Court for review of the Board of Immigration Appeals, entered on May 28, 1975, affirming the denial of withholding deportation under Section 243 (H) of the Immigration and Nationality Act.

1. Judicial review of the oral decision of the Immigration Judge, dated November 14, 1974, denying voluntary departure and the refusal to withhold deportation under Section 243 (H) is hereby requested. (EXHIBIT A)

2. The alien petitioner resides in Bronx, New York; the deportation hearing was held in New York City, New York.

3. The grounds, on which relief is sought, are as follows:

(A) Immigration Judge committed error when he permitted prior statements, made to agents of the Immigration Service, into evidence over counsel's objections with-

*Petition for Review by the Circuit Court of Appeals.*

out allowing alien to refute, clarify or explain said statements.

Statements made under oath at an evidentiary hearing should be the only material to be considered at a deportation hearing. Prior statements can be used by the government for cross examination but not read into the hearing as evidence of the truth thereof.

(B) Permitting the Immigration Judge to have in his possession the prior statement made by the alien in his initial application for political asylum and the negative decision of the State Department, is contrary to our principles of Justice and constitutes an unfair hearing. In the instance of the Immigration Judge having more than one function; that is, when he has information available to him, other than what he hears and sees during the course of the deportation proceeding, the deportation hearing is patently unfair; as the Judge has failed to separate his functions of a quasi-judicial officer.

(C) Alien is faced with being placed twice in jeopardy if he is deported to Yugoslavia. Under our traditional concepts of fair play and constitutional safeguards, a person who pays for a crime cannot be tried twice for the same offense. Unfortunately, Yugoslavia has no such constitutional guarantees and, as a citizen of their country was killed, their Courts have the right, under their law, to try this petitioner again for a crime which he has already paid for in the State of New York. In a normal situation, the United States will not halt deportation if the alien is facing prosecution for a crime he committed before entering the United States. However, this case can be distinguished from by prior judicial holdings, as the alien petitioner committed his crime while here in New York and paid for it in New York. When a statute, such as 243 (H) of the Immigration Act, is contrary to another which is a constitu-



*Petition for Review by the Circuit Court of Appeals.*

tional guarantee, such as "double jeopardy", then Section 243 (H) must give way and yield, as it is no longer just and beneficial to the persons it was meant to protect.

4. The relief sought herein is withholding of deportation of the petitioner to Yugoslavia.

5. The alien petitioner has exhausted all of his available administrative remedies and he has not departed from the United States. (EXHIBIT B)

6. That the order of deportation has not been previously reviewed in a civil or criminal proceeding.

CHARLES A. GIULINI, JR.  
CHARLES A. GIULINI, JR.  
Attorney for Petitioner

COPIES TO:

ATTORNEY GENERAL  
OF THE UNITED STATES  
IMMIGRATION &  
NATURALIZATION SERVICE

**Decision of Board of Immigrant Appeals,  
dated May 28, 1975.**

UNITED STATES DEPARTMENT OF JUSTICE  
BOARD OF IMMIGRATION APPEALS  
WASHINGTON, D.C. 20530

May 28 1975

File: A19 471 722—New York

In re: MARCO NIKPRELEVIC

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Charles A. Giulini, Jr., Esq.  
310 Madison Avenue  
New York, New York 10017

ON BEHALF OF I&N SERVICE: Paul C. Vincent  
Appellate Trial Attorney

ORAL ARGUMENT: May 19, 1975

CHARGE:

Order: Section 241(a)(2), I&N Act (8 U.S.C.  
1251(a)(2))—Nonimmigrant  
visitor—remained longer  
than permitted

APPLICATION: Voluntary departure and withholding of  
deportation under section 243(h), Immigra-  
tion and Nationality Act

The alien respondent has appealed from the November 14, 1974 decision of an immigration judge in which the respondent was found deportable, was denied withholding of deportation under section 243(h) of the Immigration and Nationality Act, and was denied the privilege of voluntary departure. The appeal will be dismissed.



*Decision of Board of Immigrant Appeals,  
dated May 28, 1975.*

The respondent is a native and citizen of Yugoslavia. He has conceded deportability as a nonimmigrant visitor who has remained beyond the authorized length of his stay. The main issues on appeal involve the respondent's section 243(h) claim.

The respondent contends that as one of Albanian descent and a Roman Catholic, he would be subject to persecution in Yugoslavia.

We have thoroughly reviewed the record, and we are satisfied that the respondent has failed to show a well-founded fear that his life or freedom will be threatened in Yugoslavia on account of race, religion, nationality, political opinion, or membership of a particular social group. See *Matter of Dunar*, Interim Decision 2192 (BIA 1973). We conclude that he will not be subject to persecution if deported to Yugoslavia. The immigration judge properly noted that the respondent was ineligible for voluntary departure under section 101(f) of the Immigration and Nationality Act.

The decision of the immigration judge was correct.

ORDER: The appeal is dismissed.

Chairman

**Oral Decision of the Immigration Judge,  
dated November 14, 1974.**

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICE

File No.: A 19 471 722—New York      November 14, 1974

In the Matter of:    )  
MARCO NIKPRELEVIC    ) In Deportation Proceedings  
—Respondent—        )

CHARGE: I & N Act—Section 241(a)(2)—nonimmigrant  
visitor—remained longer.

APPLICATION: Voluntary departure and withholding of  
deportation to Yugoslavia under Section  
243(h).

|                                |                        |
|--------------------------------|------------------------|
| In Behalf of Respondent:       | In Behalf of Service:  |
| Charles A. Giulini, Jr., Esq., | Allan A. Shader, Esq., |
| 310 Madison Avenue             | Trial Attorney         |
| New York, N. Y.                | New York, N. Y.        |

The respondent is a 44 year old married male alien. He is a native and citizen of Yugoslavia who entered the United States at New York City on or about March 13, 1971 as a visitor. He was authorized to remain in the United States until September 11, 1971, and remained after that date without authority, as he concedes. The respondent has named Holland as the country to which he wishes to be sent in the event of deportation and has requested that his deportation to Yugoslavia, if that be ordered, be withheld pursuant to Section 243(h) on the ground that if returned to that country he would be subjected to persecution by reason of his race and religion. Although those two bases are given his testimony would

*Oral Decision of the Immigration Judge,  
dated November 14, 1974.*

seem to speak on the question of political opinion as well. His application will be considered on each of those three grounds and on any other applicable ground.

Respondent has essentially claimed that persons of Albanian ethnic background in Yugoslav are victims of discrimination in employment which is made difficult for them and are deprived of certain economic benefits which are reserved to members of the Communist Party or presumably, to persons of other ethnic background, inferentially Yugoslav natives. In addition he states he is a Roman Catholic and persons of that religion are discriminated against if they are known to attend church, although the churches are open. He indicated it is better that they not be known as church-goers, and to attend any church service in secret. The only specific item to which respondent refers to in his testimony in the course of his hearing is a period of military discipline involving sixteen months in jail presumably as a result of military order while he was a member of the army. This occurred in 1953. There is also a reference, in information given to the District Director, regarding statements or a speech at a conference of the Communist Party in Petergrad in 1970. The precise genesis of that statement has not been developed. His term in Yugoslav prison he states was the result of his making certain statements in praise of the United States.

Although the respondent makes the raw claim of discrimination against Albanian ethnic citizens of Yugoslavia, it appears that he completed his education at the equivalent of the junior college level in Yugoslavi and although he was not given an honorable discharge from the Armed Forces because of his military offense after his imprisonment by the military, he was nevertheless employed as an office worker, apparently, in an insurance company or the



*Oral Decision of the Immigration Judge,  
dated November 14, 1974.*

equivalent. He has a brother who is a university graduate and a sister who is also apparently employed by a television station in Yugoslavia. She is presently in the United States as a nonimmigrant visitor and is planning to return to Yugoslavia. He has two children, a wife and mother there, and there is no evidence that any mistreatment has been visited upon them. In substance I find that the respondent has not borne the burden of showing that his return to Yugoslavia would be likely to result in his being subjected to the particularized persecution contemplated by Section 243(h). There is one further element to which respondent has referred and that is his possible prosecution by the Yugoslav authorities under Yugoslav law because he was responsible for a homicide which resulted in the death of a Yugoslav citizen while in the United States. For that particular offense the respondent has already been prosecuted by the State of New York and after having been indicted for murder in New York he was convicted, on his plea of guilty, to manslaughter in the second degree. He has served two years in prison following that conviction which occurred on September 10, 1971 at New York, in Bronx County. The possibility that the respondent may be prosecuted under Yugoslav law for killing a Yugoslav citizen, even though the murder occurred outside of that country, is not in my judgment, sufficient to constitute persecution within the meaning of Section 243(h). The application will be denied.

The respondent has applied for the privilege of voluntary departure. However, as already indicated, he has been convicted in the State of New York in 1971 for a crime, manslaughter in the second degree which may or may not involve moral turpitude. However, that conviction resulted in his being confined for a period of more than 180 days and under Section 101(f) he is precluded from estab-

*Oral Decision of the Immigration Judge,  
dated November 14, 1974.*

lishing good moral character, and therefore, ineligible for the privilege of voluntary departure. An order of deportation will be entered.

ORDER: IT IS ORDERED THAT the respondent be deported from the United States to Holland on the charge contained in the Order to Show Cause.

IT IS FURTHER ORDERED that if that country advises the Attorney General that it is unwilling to accept the respondent into its territory, or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept the respondent into its territory, the respondent shall be deported to Yugoslavia.

IT IS FURTHER ORDERED THAT the respondent's application for withholding of deportation to Yugoslavia be denied.

FRANCIS J. LYONS  
FRANCIS J. LYONS  
Immigration Judge

**Transcript of Deportation Hearing, dated  
November 14, 1974.**

Immigration Judge to Respondent (through official interpreter):

Q. What is your name? A. Marko Nikprelevic.

Mr. Giuliani: If your honor please, I would to have the respondent testify at this time in English and only have the interpreter available if he gets stuck, because he told me he would like her present, only if he has difficulty in expressing himself in certain areas. It would save time?

Immigration Judge: Well, I don't know that we will save any time.

Immigration Judge to Respondent (in English):

Q. What is your name? A. My name is Marko.

Q. Your full name? A. Full name. First name is Marko. Last name is Nikprelevic (pronounced by him: NIK-PREL-VICH).

Q. Move that microphone over closer to you. Do you understand the English language? A. I understand but in this case I can talk . . .

Q. If there is anything you don't understand, anything at all that is said here, if you don't understand, we have the official interpreter in Croatian. A. Yes.

Q. And you can then use that language and she will tell me whatever is said. Do you understand? A. I understand, but I would like to . . .

Q. Do you understand me? A. —

Immigration Judge: All right, I'm satisfied that he's a little bit too slow, Counsel, instead of being faster, it's going to be slower. So I am going to use the interpreter. She will translate to him whatever



*Transcript of Deportation Hearing, dated  
November 14, 1974.*

I say, and whatever he says, and that way we'll be sure to understand what we are talking about.

Immigration Judge to Respondent:

Q. Will you stand and . . . A. (after translation by interpreter): Very well.

Q. Now, will you stand and raise your right hand. Do you solemnly swear the testimony you will give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God? A. Yes.

Q. All right, sit down.

Immigration Judge: Mr. Guilini, do you concede service of the Order to Show Cause and waive the reading of the contents?

Mr. Guilini: Yes, I do, your honor.

Immigration Judge: Do you concede deportability on the charge as set forth in the order?

Mr. Guilini: Yes, I do, your honor.

Immigration Judge to Respondent: (through official interpreter):

Q. In the event of deportation, Mr. Nikprelevic, you have the right to select the country to which you would be sent. If you were to be ordered deported, from the United States, to what country would you wish to be sent? A. To Holland.

Q. In the event Holland will not accept you and you are ordered deported, my order will then provide that you then be sent to Yugoslavia. A. I cannot go there.

Q. Why is that? A. I cannot go any more to any country where there is Communists, because I am against this kind of government. I would like to remain in a democratic country like here, where they speak English.

*Transcript of Deportation Hearing, dated  
November 14, 1974.*

Immigration Judge: Will there be an application under Section 243(h) Counsel?

Mr. Guilini: Yes, your honor.

Immigration Judge: I have your application, you are applying under Section 243(h), that has been executed, and I will mark that Exhibit Two. The Order to Show Cause is marked Exhibit One.

Immigration Judge: Any other application, besides the 243(h)?

Mr. Guilini: No, your honor.

Immigration Judge: No voluntary departure?

Mr. Guilini: I think in this case I am not going to make an application. All right, I will make an alternative application for voluntary departure, in the event that 243(h) application is denied.

Immigration Judge: Do you want to question him on the application, Mr. Guilini?

Mr. Guilini: Yes, your honor.

Mr. Guilini to Respondent:

Q. Mr. Nikprelevic, your application today before the judge of the immigration court is to seek political asylum in the United States on the basis of persecution in your home country of Yugoslavia, on the basis of your race, religion or political thoughts.

Immigration Judge: Well, which is it?

Mr. Guilini: In this case, it is race. Race and religion.

Immigration Judge: All right, go ahead.

Mr. Guilini to Respondent:

Q. Could you tell me, Mr. Nikprelevic, were you ever in jail in Yugoslavia? A. I wrote everything down, I gave you here . . . about being in prison, everything.



*Transcript of Deportation Hearing, dated  
November 14, 1974.*

Q. I am going to ask you questions on this affidavit.

Immigration Judge: Wait a minute, do you mean the application?

Mr. Guilini: No the affidavit contains more or less everything that the respondent has told me that he was in a military prison, the reason why he was in a military prison, what the discrimination is in Yugoslavia for people of Albanian descent. Do you want me to read the whole thing?

Immigration Judge: No you don't have to read it, I have it in evidence. That's part of the record. I mean, if that is all he is going to tell us. Do you want to expand on that?

Mr. Guilini: Yes.

Mr. Guilini to Respondent:

Q. Mr. Nikprelevic, are you a citizen of Yugoslavia? A. Yes.

Q. And are you of Albanian descent? A. Yes. My nationality is Albanian.

Q. Can you tell me the situation in Yugoslavia with respect to the treatment that persons like you who are similarly situated receive in Yugoslavia?

Mr. Shader: I object to that.

Immigration Judge: I'll allow it.

By Respondent: The law in Yugoslavia is quite different for people who are from a different race. We who are Albanians are threatened very very much because of our religion, because of our how we are treated. There is a difference of how they treat some people one way and some people the other way. It is very difficult for some one who is Albanian to get a good job, to advance or to be treated like all the

*Transcript of Deportation Hearing, dated  
November 14, 1974.*

other people there. There is a big difference. In fact one is treated very poorly is not a Yugoslav.

Mr. Guilini to Respondent:

Q. I ask Mr. Nikprelevic, does the Albanian citizen have the same opportunity of education in Yugoslav as the Yugoslav citizen?

Immigration Judge to Counsel: Do you mean a person who is of Albanian Descent who is a Yugoslav citizen?

Mr. Guilini: Yes.

By Respondent: I want to swear to tell the truth in what I am going to tell you, that on the surface everybody is supposed to have the same rights but when you go to get a job, you do not get it, and this makes a big difference and you suffer meanwhile.

Mr. Guilini: I asked him about education.

Immigration Judge: Don't tell us what you asked him. That's his answer. Now if you have another question, ask him that.

Mr. Guilini to Respondent:

Q. Mr. Nikprelevic, does the same opportunity at an education exist for Yugoslav citizens of Albanian descent?

Mr. Shader: Compared to what?

Mr. Guilini: As the aliens, let's say.

Immigration Judge: Read between the lines.

By Respondent: People of Albanian descent in Yugoslavia don't get to higher school it's the other ones who get to go to school, and it is difficult to get an education.

*Transcript of Deportation Hearing, dated  
November 14, 1974.*

Immigration Judge to Respondent:

Q. Why? A. It makes a big differences because all the Yugoslavs take more education, and get money and state education and mostly not the Albanians, even if they are smart and intelligent.

Mr. Guilini to Respondent:

Q. Mr. Nikprelevic, what religion are you? A. I am Catholic.

Q. Does the Yugoslav government interfere in any way your practicing your religion in Yugoslavia? A. People over there do not look at you in a good way if you are religious. They are against all the religions in general, and if you go to the church of your religion you are scared to go to church openly. Because they are against the people who go to church.

Q. And by against the people who go to church, that means that if you go to church and they see you go to church you don't get a good job?

Mr. Shader: I object.

Immigration Judge: Sustained.

Mr. Guilini: Well, what does he mean by they are against the people who go to church?

Mr. Shader: I object to that too.

Immigration Judge: I'll allow it.

By Respondent: No, you see it is very very difficult, if you are a Christian you always have to be in hiding, because all those things are against you. I come from a very religious family and we had to do everything in hiding because, if you go to church and you want to get something you can't get it a job or something, else. They tell you, why you go to church.



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November 14, 1974.*

Mr. Guilini to Respondent:

Q. Now, you, as a Yugoslav citizen of Albanian descent, can you go into a business or a profession in Yugoslavia?

A. In many places it is against the law for an Albanian to open for any kind of a business.

Q. But a Yugoslav citizen can?

Mr. Shader: I object as leading.

Immigration Judge: I have to sustain the objection, Counsel.

Mr. Guilini: Well.

Mr. Guilini to Respondent:

Q. Can anyone in Yugoslavia in general go into business, except Albanians or is there some discrimination in a profession or a business against Albanians in Yugoslavia.

Mr. Shader: I object to that question as too confused.

Immigration Judge: Overruled.

By Respondent: You see, if you want to have a business you have to have a special permit and an Albanian never gets it. Never.

Mr. Guilini to Respondent:

Q. Now, Mr. Nikprelevic, I asked you if you were ever in jail in Yugoslavia, I am going to qualify that. Were you ever in a military jail in Yugoslavia? A. Yes.

Q. Can you explain the circumstances how you were put in jail in Yugoslavia? A. If I have to explain this it is a very long story.

Q. No, just details. A. Then, short, I'll tell you. I come

*Transcript of Deportation Hearing, dated  
November 14, 1974.*

from a family who is very well known and I went to military school as a young boy. I used to like to say my opinion and I always have admired the United States, and in a convention in 1953 I said in words how much I like the United States and I spoke at that time saying we have to thank the United States for helping us in 1948 when there was a big conflict between Russia and Yugoslavia, and we should thank the United States because they helped us very very much. And the following day all I know is that I was put in prison and they kept me sixteen to seventeen months, sixteen and a half months, and you can see that because I was seventeen months in prison, the military prison.

Immigration Judge to Respondent:

Q. That was in 1948? A. In 1953.

Mr. Guilini to Respondent:

Q. All right, now, Mr. Nikprelevic, does Yugoslavia have any secret agents or secret police in restaurants and shops in Yugoslavia to listen to what the people are saying against the government or saying in general about the administration? A. Wherever you go all the people who belong to the party, you can't even say, like here what you can say against Nixon or this or that, you can't even open your mouth, because if you open your mouth, you will be put in jail right away.

Q. So you believe that there are secret agents in . . .

Immigration Judge: Don't you say so, ask him.

Mr. Guilini to Respondent:

Q. My question, Mr. Nikprelevic is, is there say secret agents of the Yugoslav government that go into restau-

*Transcript of Deportation Hearing, dated  
November 14, 1974.*

rants and shops and listen and their job is described to listen and to report what the people are saying about the government.

Mr. Shader: If you know.

Mr. Guilini: If you know.

By Respondent: Of course we have very many agents, the UZBA and even the police and the UZBA is a secret police, and the militia, and the UZBA is the female secret police.

Mr. Guilini to Respondent:

Q. Mr. Nikprelevic do you know to your knowledge that these people or is it your opinion, that if you go back to Yugoslavia that you will be discriminated against because of your race and your religion? A. —

Mr. Shader: I object to that.

Immigration Judge: Sustained.

Mr. Guilini to Respondent:

Q. Mr. Nikprelevic, just a minute. Did you obtain a visitor's visa to the United States from Holland? A. —

Immigration Judge: Not from Holland, you mean in Holland.

Mr. Guilini to Respondent:

Q. From the United States Consul in Holland? A. Yes.

Q. And when did you arrive here.

Immigration Judge: Wait a minute.



*Transcript of Deportation Hearing, dated  
November 14, 1974.*

Immigration Judge to Respondent:

Q. What were you doing in Holland? A. I left Yugoslavia in order to find a way to come to the United States. I went to Holland as the place where I could get a visa to come to the United States.

Q. How long were you in Holland? A. About a month and a few days.

Mr. Guilini to Respondent:

Q. Mr. Nikprelevic are you presently employed? A. Yes.

Q. And can you tell us for whom and what your occupation is? A. When I came here I tried several times to get a job wherever I went they said you have to show us a paper that you have the right to work in the United States. At the end I got this job as a doorman in a very refined place where I have been working all the time, and they are very satisfied with me. They are very nice people there and they said if the immigration wants to ask you some questions we are willing to talk to them and let you answer

...  
Q. Mr. Nikprelevic, do you know of any people of Albanian descent, Yugoslav citizens who came to the United States as political refugees?

Immigration Judge: What is that going to prove?

Mr. Guilini: I ask your honor to take judicial notice of the fact that there are about ten thousand or twelve thousand refugees now here, who came here at the expense of the United States government.

By Respondent: I finished high school in Yugoslavia but high school there is equivalent to junior

*Transcript of Deportation Hearing, dated  
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high school here, it needs two years more and I worked fifteen years in an insurance company.

Mr. Guilini: That's all.

Mr. Shader to Respondent:

Q. In which way in which years did you serve in the Yugoslav military service? A. 51 to about 54.

Q. Were you honorably discharged? A. No, because I was in the prison as I told you.

Q. Did you go right back from prison to the military? A. No, no more.

Q. You were discharged right from prison? A. From the military prison, to the prison office.

Q. How old were you? A. 44.

Q. And your brother is a television newscaster in Titograd, is that right? A. Yes.

Q. What education has he had?

Mr. Guilini: Objection, judge, what is this, there was no direct questioning about his brother. It's irrelevant.

Immigration Judge: Overruled. The fact that you didn't think of asking the question doesn't mean it is irrelevant.

Mr. Shader to Respondent:

Q. What education has he had? A. He was educated at the university.

Q. And your sister Maria, where is she? A. She is here.

Q. She is here now? A. Yes. My sister wanted to come and visit me and she came.

Q. She worked at one time at a television station in Titograd? A. Yes, and she is still working there.



*Transcript of Deportation Hearing, dated  
November 14, 1974.*

Immigration Judge to Respondent:

Q. But you say she is here now. A. Yes.

Q. How did she come here? A. She came as a tourist to the United States to visit me. She has a visa for 45 days.

Q. Is she going back there? A. Yes, she is going back.

Q. Is she going back to Yugoslavia? A. Yes. To Yugoslavia.

Q. How old is your sister? A. She is 41, no, perhaps, 39, not forty.

Immigration Judge: Go ahead, Mr. Shader.

Mr. Shader to Respondent:

Q. In the United States were you convicted of crime?  
A. Yes.

Mr. Guilini: Judge, I am going to object. I don't think this is applicable for 243(h).

Immigration Judge: He is applying for voluntary departure, among other things.

Mr. Shader to Respondent:

Q. And were you sentenced? A. —

Mr. Guilini: On the record I stipulate to the sentence, and the record.

Mr. Shader to Respondent:

Q. How long were you in jail? A. Two years.

Q. Two years, and when were you discharged? A. August 2nd, 1973.

*Transcript of Deportation Hearing, dated  
November 14, 1974.*

Q. Are there any Catholic churches open in Yugoslavia?

A. There are a few but not many.

Mr. Shader: I offer now for the record, a referral was made to the Department of State, and their response regarding respondent's request for asylum. I offer all these documents for the record.

Immigration Judge: Is there any objection, Mr. Guilini?

Mr. Guilini: I have objections to parts of each letter which I would like to go over, if your honor would please hand them back to me, there are certain statements in these papers which are not true and which I can testify to.

Immigration Judge: Well, you're not going to testify are you?

Mr. Guilini: Well, I may if you don't accept my word, your honor. I may testify.

Immigration Judge: Regarding the contents of the letters?

Mr. Guilini: Yes. Some things need clarification, some need. . . .

Immigration Judge: Just a minute, the letter from the District Director to the Department of State, what are your objections to that letter. Let's take them one by one.

Mr. Guilini: May I go on the record.

Immigration Judge: But before you do that, I do not propose to be guided by any data that is in the District Director's letter which is not reflected in my record on the basis of independent evidence. So if there are any representations in that letter which is not a part of the record, and anything which you may say is not so, you need not worry

*Transcript of Deportation Hearing, dated  
November 14, 1974.*

if it is not so which is not in my record, independently. If on the other hand, there is something that you want to include in the record, you will have to do it by presenting independent evidence supporting it, whether that be the testimony of your client, or something else.

Mr. Guilini: Can we go off the record, judge?

Immigration Judge: All right.

Mr. Guilini: I have no objection, judge, after listening to your statement.

Immigration Judge: Now, as I understand, you contend that by reason of the murder, or the homicide, which occurred in the United States, you contend that he would be prosecuted there?

Mr. Guilini: Yes, I do.

Immigration Judge: Why is that?

Mr. Guilini: I had a discussion with the Yugoslav Consulate. I have represented him for practically ten years. I know. I have spoken to him . . .

Immigration Judge: Just tell me what your conclusion is.

Mr. Guilini: Since he has killed a Yugoslav citizen, he will be prosecuted in Yugoslavia despite the fact that he was punished over here.

Immigration Judge: Now, as to the State Department letter, any objection?

Mr. Guilini: I think the objection is that there is some phraseology in there and he won't be prosecuted, which he will be, though.

Immigration Judge: Other than that?

Mr. Guilini: Yes, that's all.

Immigration Judge: And as to the reply—the notice of denial you imply there is nothing in there.

Mr. Guilini: No, no objection.



*Transcript of Deportation Hearing, dated  
November 14, 1974.*

Immigration Judge: All right, I will mark the three letters as a single exhibit, Exhibit 4. All right, anything else, Mr. Shader?

Mr. Shader: No, sir.

Immigration Judge: Mr. Guilini?

Mr. Guilini: I have no further questions of this witness, Judge.

Immigration Judge: All right, before we proceed further,

Immigration Judge to Respondent:

Q. Besides your brother and sister, do you have any other siblings? A. My mother.

Q. Brothers and sisters besides. A. I have two children and my wife.

Q. You have two children and your wife in Yugoslavia? Is that right? A. Yes, in Yugoslavia.

Immigration Judge: Anything else?

Mr. Guilini: I would like to explain the suicide to you off the record, judge.

Immigration Judge: You have just put it on the record. Do you mean the suicide of his father?

Mr. Guilini: Yes.

Immigration Judge to Respondent:

Q. How old are your children? A. One is 15 one is seven. They are two girls. She is in the tenth grade my oldest one. And she studies English.

Immigration Judge: Anything else?

Mr. Guilini: Nothing, judge.

*Transcript of Deportation Hearing, dated  
November 14, 1974.*

Immigration Judge: All right, this is the decision in the case. . . .

Note: At this point in the proceedings the Immigration Judge delivered an oral statement of his decision in this matter. This has been transcribed separately and is attached. \* \* \*

Immigration Judge: Do you reserve your right to appeal, Mr. Guilini?

Mr. Guilini: Yes.

Immigration Judge: All right, the time to appeal expires on November 25. I will give you the forms now for that.

**Affidavit Requesting Stay of Deportation under  
Section 243(H), dated November 14, 1974.**

UNITED STATES DEPARTMENT OF JUSTICE

[S A M E T I T L E]

STATE OF NEW YORK  
COUNTY OF NEW YORK

MARCO NIKPRECEVIC, being duly sworn, deposes and says:

1. That I am a native and citizen of Yugoslavia of Albanian descent.
2. That at all times I have been anti-communist and in favor of democracy and the democratic process.
3. As early as 1952 while serving in the Yugoslavian army I spoke out during a political lecture in favor of United States intervention in Korea. I was asked if I favored capitalism and I answered "yes". The next day I was arrested and each day I was questioned by the military authorities until I was brought before the military court. After a three day trial, I was given a sentence of sixteen months in a military jail located in Nis, Yugoslavia for political reasons.
4. As a person of Albanian descent residing in Yugoslavia, I was persecuted because of my race, and in fact if deported will be persecuted again because of my race and beliefs. Yugoslavia discriminated against the Albanian minority by not permitting Albanians access to education and jobs.

Even with respect to practicing ones religion, the Yugoslavian authorities control the attendance of Albanians



*Affidavit Requesting Stay of Deportation under  
Section 243(H), dated November 14, 1974.*

in Church. Persons of Albanian descent are second class citizens in Yugoslavia and are not given the same opportunities in employment as other Yugoslav citizens have. If you become a member of the Communist Party, you are given a good job and a car. Those who choose not to join are given menial jobs and low pay.

5. As proof of the discrimination practices by the Yugoslav authorities, I attach copies of statements made by Albanian groups who are cognizant of the situation in Yugoslavia with regard to persecution of Albanian ethnics like myself.

6. The Socialist Federal Republic of Yugoslavia is a government with Communist ideologies. The Yugoslav government would like the world to believe that they are Socialist and not Communists but the United States government knows different. Everyone in Yugoslavia is subject to being put in jail without a fair trial simply by stating that they are not in favor of the present government. Government agents are everywhere, every restaurant, shop and store has an agent of the government assigned to watch and listen and report what activity is taking place in his post.

Citizens and especially Albanian ethnics are not free to choose a profession or even a private business since the State controls all businesses and professions.

7. Many persons of Albanian descent have come to the United States as political refugees due to their being persecuted in Yugoslavia for their race and religion. The United States government has brought tens of thousands of my fellow Albanians to the United States at a cost of many millions of dollars. I am in the same position and have the same problem of persecution that

*Affidavit Requesting Stay of Deportation under  
Section 243(H), dated November 14, 1974.*

they had. The only difference being, is that I arrived here as a visitor and not as a refugee.

8. My entire family except for my wife and children are presently living in the United States. All of my family have come to the United States as political refugees. I am gainfully employed and have been since my release from prison.

9. If I am ordered deported to Yugoslavia, I fear I will be persecuted by reason of my past and present opposition to Communism. I will also be persecuted due to the discrimination practices of the Yugoslav authorities towards ethnic Albanians. I therefore request that deportation be withheld in my case pursuant to Section 243 (H).

(Sworn to by Marco Nikprelevic, November 14, 1974.)



**Letter to Petitioner from District Director, dated July  
9, 1974, denying Request for Asylum.**

20 WEST BROADWAY  
NEW YORK, N. Y. 10007

A19 471 722 DB/KB  
July 9, 1974

Mr. Marko NIKPRELEVIC  
60 West 190th Street Apt. #30  
Bronx, New York 10468

Dear Sir:

Reference is made to your request for political asylum filed  
on August 30, 1973 and further elaborated on October 11,  
1973.

In consultation with the Department of State, this Service  
has determined that there is no basis for granting your  
request for political asylum.

This finding does not preclude you from filing an applica-  
tion under Section 243 (h) at the time of your hearing, if  
you do desire.

Very truly yours,

MAURICE F. KILEY  
Maurice F. Kiley  
Acting District Director

cc: Charles A. Giulini, Jr., Esq.

**Letter to Immigration and Naturalization Service from  
Department of State, dated June 24, 1974.**

DEPARTMENT OF STATE  
Washington, D.C. 20520

Dear Mr. Marks:

Jun 24 1974

Reference is made to your letter of January 31, 1974, concerning the request for asylum of Marko Nikprelevic, A19 471 722, a citizen of Yugoslavia.

We do not believe Mr. Nikprelevic has made a valid claim to asylum. He was able to obtain documentation to depart from Yugoslavia in 1971 despite the alleged public anti-Communist statements he made both while in the Yugoslav army (1951-2) and in 1970. As to Mr. Nikprelevic's claim that he will be imprisoned upon his return to Yugoslavia for killing a Yugoslav woman in 1971, we note that Mr. Nikprelevic was charged with manslaughter and served his sentence in the United States; there is no evidence that he would be imprisoned on the same charge upon returning to Yugoslavia. In addition, punishment he might receive because he killed a Yugoslav woman would not constitute persecution within the meaning of the Convention Relating to the Status of Refugees.

On the basis of the information thus far submitted, we are unable to conclude that Mr. Nikprelevic should be exempted from regular immigration procedures on the grounds that he would suffer persecution on account of race, religion, nationality, political opinion, or membership in a particular social group should he return to Yugoslavia. Should Mr. Nikprelevic present additional information which to the Service seems to require further review, we will be glad to give further consideration to the case.

Sincerely,

LOUIS A. WIESNER  
Louis A. Wiesner  
Director  
Office of Refugee and  
Migration Affairs

Mr. Sol Marks,  
District Director,  
Immigration and Naturalization Service.

**Letter to Department of State from Immigration and  
Naturalization Service, dated January 31, 1974.**

20 WEST BROADWAY  
NEW YORK, NEW YORK 10007

A19 471 722 D/B/KB

January 31, 1974

Director  
Department of State  
Office of Refugee and Migration Affairs  
Washington, D. C.

Dear Sir:

Your recommendation is requested in the case of Marko NIKPRELEVIC who has made application for political asylum.

Mr. Nikprelevic, a married, male, native and citizen of Yugoslavia, was born in Titograd, Yugoslavia on January 23, 1928. His passport, number CA 193526, issued on December 20, 1966 and valid until December 20, 1976, contains a B-2 visa issued at Rotterdam, Netherlands on March 12, 1971.

Mr. Nikprelevic entered the United States at New York, New York on March 13, 1971 as a visitor for pleasure. He was authorized to remain in the United States until September 11, 1971. Mr. Nikprelevic was placed under deportation proceedings on December 12, 1972, under Section 241(a)(2) of the Immigration and Nationality Act, in that after admission as a nonimmigrant, he remained longer than authorized. A deportation hearing has been adjourned pending your recommendation on Mr. Nikprelevic's application for asylum.

Mr. Nikprelevic was interviewed at this office on October 11, 1973 regarding his application for political asylum. Mr.



*Letter to Department of State from Immigration and  
Naturalization Service, dated January 31, 1974.*

Nikprelevic stated that his wife, Mileva Nikprelevic, and their two children reside at Marka Milianova, number 11A, Titograd, Yugoslavia. His wife works in an insurance company where he used to work. His mother, Dila Nikprelevic, resides in Titograd and his father is deceased, having committed suicide in 1971. His brother, George Nikprelevoic, is a television newscaster in Titograd and his sister, Maria Nikprelevic, works for a television station in Titograd.

When asked why he is claiming political asylum, Mr. Nikprelevic stated that he has made statements against Communism. He stated that he wrote letters to the United States Government which were anti-communist in nature. Mr. Nikprelevic further stated that many Yugoslavians think that he is in the United States as a spy.

Mr. Nikprelevic stated that he was an officer in the Yugoslavian army from 1951 to 1952. He stated that he spent six months in a military jail and was court martialed and discharged as an enemy of the government because he spoke against Communism.

Mr. Mikprelevic stated that neither he nor the members of his family are Communist Party members. However, Mr. Nikprelevic stated that he talked against Communism at a conference of the Communist Party in Titograd in 1970. Furthermore, Mr. Nikprelevic stated that the Consulate General of Yugoslavia in New York City has informed the Yugoslavian Government that he made anti-Communist statements.

When asked what would happen to him if he were forced to return to Yugoslavia, Mr. Nikprelevic stated that he feels that he would be imprisoned. He further stated that he knew of a man who was a native of Yugo-

*Letter to Department of State from Immigration and  
Naturalization Service, dated January 31, 1974.*

slavia and a naturalized citizen of the United States who returned to Yugoslavia and was imprisoned for seven years because he was alleged to be a member of an anti-Communist organization, when in reality, he was only a member of a church organization. Furthermore, Mr. Nikprelevic's two uncles were arrested in 1950 and imprisoned for eight years each for anti-Communist activities.

On October 21, 1971, Mr. Nikprelevic was sentenced to a maximum of four years for manslaughter. He admitted killing a woman, Milena Boricic, a citizen of Yugoslavia. He has finished serving his sentence. Mr. Nikprelevic feels that he would be imprisoned upon his return to Yugoslavia for the murder of a Yugoslavian citizen.

Yours truly,

SOL MARKS  
District Director  
New York District

In Deportation Proceedings under Section 242 of the  
Immigration and Nationality Act

In the Matter of )  
MARKO NIKPRELEVIC )  
Respondent. )

To: Marko Nikprelevic File No. A19 471 722  
(name)

c/o Clinton Correctional Facility, Dannemora, New  
York 12929

Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Yugoslavia and a citizen of Yugoslavia
3. You entered the United States at New York City on or about March 13, 1971;  
(date)
4. At that time you were admitted to the United States as a visitor for pleasure and were authorized to remain in the United States as a non-immigrant until September 11, 1971.
5. You have remained in the United States beyond that time without permission.



*Order to Show Cause and Notice of Hearing,  
dated December 12, 1972.*

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a) (2) of the Immigration and Nationality Act, in that, after admission as a nonimmigrant under Section 101(a)(15) of said act, you have remained in the United States for a longer time than permitted.

WHEREFORE, YOU ARE ORDERED to appear for hearing before a Special Inquiry Officer of the Immigration and Naturalization Service of the United States Department of Justice at date and place to be set ..... on ..... at .....m, and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: December 12, 1972

IMMIGRATION AND NATURALIZATION SERVICE

W. J. BROWN

(signature and title of hearing officer)

William J. Brown, Acting District Director  
Buffalo, New York  
(City and State)

Form 1-221  
(Rev. 3-30-67)

(59256)

COPY RECEIVED

JAN 21 1976'

*Thomas J. Cahill*

U. S. ATTORNEY

SO. DIST. OF N. Y.